IN THE HIGH COURT OF UTTARANCHAL
AT NAINITAL

CRIMINAL MISC. APPLICATION NO.711 OF 2001
Old No. 6264/1997

S.S. Sharma
S/o Sri S.D. Sharma
Ex. General Manager
The Mahalakshmi Sugar
Mills Ltd. Isbalpur
District Haridwar ..... Applicant

VERSUS

1. State
2. Judicial Magistrate, Roorkee
   District Haridwar
3. Sri Sukhbir Singh
   I.O. (C.O)
   P.S. Bhagwanpur
   District Haridwar
4. Sri Radhey Mohan Bhardwaj
   Circle Officer
   Roorkee District Haridwar
5. Sri Ved Pal Kataria
   Secretary
   Chini Udyog Mazdoor Union (Regd.)
   Iqbalpur, Bhagwanpur
   District Haridwar. ..... Respondents.

Dated:- 18-7-2005

Hon'ble J.C.S. Rawat, J.

Heard the parties counsel and perused the record. Notice was sent to the complainant-respondent No.5 (Ved Pal Kataria) and as per the report of the CJM Haridwar the respondent No.5 has died.

This is an application under section 482 Cr.P.C. for setting aside the order dated 1/6-8.1997 passed by Judicial Magistrate, Roorkee in case No.345/1997 State Vs. S.S. Sharma.

The brief facts relating to this case are that a FIR was lodged before the police station on 30.3.1997 with

the allegations that from 26.3.1997 to 29.3.1997 the complainant was ill. The complainant met with the accused on 29.3.1997 where K.L. Sethi, Manager was also present. When they saw the complainant they became angry and started hurling abuses against him and used the word “Sale-Chamar”. On the basis of the said FIR, the investigation was conducted. The Investigating Officer while submitting the chargesheet has mentioned in it that the FIR was lodged under sections 504/506 I.P.C. and 3(1)(X) of S.C. & S.T. Act. He further mentioned in the chargesheeet that during the investigation he came to know that the accused had prepared certain forged documents on the basis of which the complainant was suspended. On that basis, he submitted the chargesheet under section 504/506/466/468 I.P.C. and 3(1)(x) of S.C. & S.T. Act. Thereafter, the Magistrate has passed the order of cognizance under sections 504/506/466/468 I.P.C. and 3(1)(x) of S.C. & S.T. Act. Feeling aggrieved by the said order, the present application has been filed before this Court.

It was contended by the learned counsel for the applicant that the perusal of chargesheet it reveals that the FIR was filed under section 504/506 I.P.C. & 3(1)(x) of S.C. & S.T. Act, whereas the I.O. has given his opinion during investigation that certain papers were forged and filed on the basis of the which the complainant was suspended. It was further contended that the I.O. was not asked by the complainant in FIR to investigate with regard to forged papers. It was further pointed out that no such report was lodged by the complainant in this regard. It was further contended that the learned Magistrate while passing the impugned order has not applied his mind and he

passed the cognizance order mechanically. It was further contended that the learned Magistrate should have considered this fact as indicated above while taking the cognizance. The learned A.G.A. refuted the contention.

It is well settled position of law that while taking the cognizance the Magistrate should see as to whether there is a prima facie case or not against the accused and he should have satisfied that the cognizance of the offence is proper. This order has been passed by the Magistrate mechanically because the chargesheet itself reveals that the subsequent events had been taken into consideration and the Magistrate has not considered the entire aspect. Therefore, cognizance order dated 1/6-8.1997 passed by Judicial Magistrate, Roorkee is liable to be set-aside.

In view of the above discussion, the order dated 1/6-8.1997 passed by Judicial Magistrate, Roorkee in case No.345/1997 is set-aside. The case is remitted back to the learned Magistrate, who will consider as to whether there are sufficient grounds to proceed against the accused and will pass a speaking order in this regard.

The application under Section 482 Cr.P.C. is disposed of finally with the above observations.

(J.C.S. RAWAT,J)

Dated:- 18-7-2005

MPS